103 Phil. 145

[G. R. No. L-10694. March 20, 1958]

MULLER & PHIPPS (MANILA), LTD., PETITIONER AND APPELLANT, VS. THE COLLECTOR OF INTERNAL REVENUE, RESPONDENT AND APPELLEE.

D E C I S I O N

REYES, J.B.L., J.:

Petitioner Muller & Phipps (Manila), Ltd., is engaged, among other things, in the manufacture of Kolynos Toothpaste and for this purpose imports raw materials from the Home Products International, Ltd., in New York, U.S.A. Sometime in 1951 and 1952, petitioner imported kolynos essence, powdered soap, and calcium carbonate for manufacture into Kolynos Toothpaste and, in accordance with sec. 183 (B) of the National Internal Revenue Code, paid the advance sales taxes on said raw materials upon their withdrawal from customs custody on September 9, 1951 and January 19 and 22, 1952. Because of the lack of packaging materials, however, petitioner was not able to use all of said raw materials so that on July 27, 1953, it shipped back to its supplier in the United States the unused materials to prevent their deterioration.

On August 4, 1953, ten days after the return of the unused raw materials to the United States, petitioner filed with the Collector of Internal Revenue a claim for the refund of the amount of P4,453.25 representing advance sales taxes paid on said goods. The Collector denied the claim by letter of January 25, 1955, received by petitioner on February 7, 1955. On February 22, 1955, appellant iiled a request for a reconsideration of the Collector's denial of its claim, which request was denied on November 3, 1955 and copy of the denial was received by petitioner on November 10, 1955. On November 23, 1955, petitioner filed a petition for review with the Court of Tax Appeals.

In the Court of Tax Appeals, the Collector moved to dismiss petitioner's petition for review on the ground that it was filed beyond the two-year prescriptive period provided for in sec. 306 of the Tax Code. The court found this motion meritorious and dismissed the petition for

lack of jurisdiction. Petitioner moved for reconsideration, which was denied. Wherefore, petitioner appealed to this Court by petition for review.

It is the contention of appellant that the two-year period of limitation prescribed in sec. 306 of the Tax Code has been impliedly repealed by Rep. Act 1125 creating the Court of Tax Appeals, that its period to file a court action for refund within two years under sec. 306 of the Tax Code must be computed from the time it returned the unused materials to the United States, which was the time its cause of action to ask for refund accrued; that consequently, it had not yet lost its right of action when Rep. Act 1125 came into effect; and that therefore, it could pursue its remedy in accordance with the procedure laid down by Rep. Act 1125, which was to appeal to the Court of Tax Appeals within thirty days from receipt of the decision or ruling of the Collector denying its claim for refund.

Sec. 306 of the Tax Code provides:

> "Sec. 306. *Recovery of tax erroneously or illegally collected*.—No suit or proceeding shall he maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegaliy assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be there would have been a confusion in the minds of the under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty. (Italics supplied.)

We think it plain that the provisions of section 306 do not apply to appellant's case. By its terms, the two-year limit established by said section applies only to actions to recover (1) "any—tax alleged to have been *erroneously* or *illegally* assessed or collected," or (2) "any penalty—*collected without*, *authority*," or (3) "any sum-*wrongfully* collected". In such cases, as held by us in the case of P. J. Kiener & Co. Ltd. *vs.* David (92 Phil., 945, 49 Off. Gaz., [5], 1852 and the recent one of College of Oral and Dental Surgery *vs.* Court of Tax Appeals (102 Phil., 912, 54 Off. Gaz., [29], 7055), the taxpayer must file action within 2 years from payment of the tax, and need not wait for a decision of the Collector on his claim for refund before taking the matter to court. The reason is that the inaction of the Collector upon the taxpayer's claim for refund of the taxes paid, constitutes or may be construed as a

reaffirmation of the original action taken by him, which the taxpayer claims to be erroneous or wrongful; and such original action can be subjected to court review, without awaiting its affirmance by the Collector.

But the case of appellant Muller & Phipps (Manila) Ltd., is entirely different. Here, the original action of the Collector in assessing advance sales tax on the imported raw materials is not challenged. Appellant admits that the taxes so assessed, collected and paid in 1951 and 1952 were legitimately due, and were not wrongfully or erroneously collected. The taxpayer's position is that, by reason of supervening circumstances (i.e., the re-exportation of part of the imported materials), it subsequently became entitled to a partial refund of the taxes previously paid. Therefore, until the Collector rejected that claim for refund, the taxpayer had no cause of action. Before such rejection, there was no ruling or action of the Collector that the taxpayer could contest or submit to a review; wherefore, no prescriptive period could begin to run until and unless the Collector refused to make a refund. Thus, the prescriptive period of two years *from payment*, fixed by sec. 306 of the Tax Code, can not apply to the present case.

Since Republic Act No. 1125, sec. 7, conferred upon the Court of Tax Appeals exclusive jurisdiction to review by appeal decisions of the Collector of Internal Revenue in cases involving refunds of internal revenue taxes, the law applicable to appellant's case is sec. 11 of said Act. No. 1125:

> "Sec. 11. *Who may Appeal; Effect of Appeal*.—Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals *may file an appeal in the Court of Tax Appeals within thirty day after the receipt of such decision or ruling.*
>
> No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law; *Provided, however*, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file

> a surety bond for not more than double the amount with the Court." (Emphasis supplied.)

The record shows that refund was denied only on February 7, 1955. Fifteen days later, on February 22, 1955, appellant sought a reconsideration, and notice of its denial was received on November 10, 1955. Thirteen days afterwards, on November 23, 1955, the case was appealed to the Court of Tax Appeals. Since pursuant to our ruling in Libuet *vs.* Auditor General, G. R. No. L-10160, June 28, 1957, the practice of permitting motions of reconsideration and deducting the time used in considering it, applies to administrative cases, being in consonance with the principle of exhaustion of administrative remedies, the appeal of the taxpayer in the case before us must be regarded as taken only twenty-eight days after the Collector's denial of the refund sought (discounting the period between February 22, 1955 to November 23, 1955 when the reconsideration was pending). The appeal was therefore taken well within the thirty-day period provided by sec. 11 of Republic Act No. 1125.

From the foregoing it is readily apparent that the Court of Tax Appeals had jurisdiction over the case; and it was error for it to dismiss the taxpayer's appeal for want of jurisdiction.

Wherefore, the order of dismissal appealed from is reversed, and the records are ordered remanded to the Court of Tax Appeals with direction to proceed to hear the same, and decide it on its merits. Without costs. So ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Endencia and *Felix, JJ.,* concur.

Date created: October 14, 2014